

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.622(b),)	MM Docket No. 01-313
Table of Allotments,)	RM-10251
Digital Television Broadcast Stations.)	
(Tulsa, Oklahoma))	

To: Chief, Video Services Division, Mass Media Bureau

COMMENTS OF FT. SMITH 46, INC.

1. Ft. Smith 46, Inc. (Ft. Smith 46) hereby submits these Comments in response to the Commission's *Notice of Proposed Rule Making* in the above-captioned proceeding, DA 01-2572, released November 7, 2001.

2. Ft. Smith 46 is the licensee of Class A Television Station KFDF-CA, which is authorized to operate on Channel 10, Fort Smith, AR, Facility ID 52418. The *Notice* proposes to allot DTV Channel 10 to Tulsa, Oklahoma, co-channel to KFDF-CA. The proposal admittedly would have an impact on KFDF-CA; but the Petitioner, KTUL, LLC ("KTUL"), claims that interference to KFDF-CA would not be "impermissible."^{1/} KTUL goes on to say, however, that it is seeking a solution to a "technical problem" within the meaning of Section 336(f)(1)(D) of the Communications Act, thereby enabling it to disregard Class A stations altogether.^{2/}

3. Ft. Smith 46 does not object to the proposed allotment based on KTUL's showing that no impermissible interference will in fact be caused to KFDF-CA. However, it does object to KTUL's assertion that interference to KFDF-CA may be ignored altogether.

1/ Petition for Rule Making at p. 2.

2/ *Id.* at fn. 1.

4. Section 336(f)(1)(D) states that if technical problems exist that require an engineering solution to a full-power station's allotted parameters or technical assignment, the Commission shall make modifications (i) to ensure replication of the full-power station's DTV service area and (ii) to permit maximization of DTV facilities if the station filed a timely maximization application.^{3/} There is nothing in the record of this proceeding that indicates that KTUL has a replication or maximization problem.^{4/} Since those are the purposes for which the statutory remedies apply, and they do not apply here, KTUL does not have a "technical problem" is not entitled to a statutory remedy.^{5/}

3/ The statutory provision reads as follows:

(D) RESOLUTION OF TECHNICAL PROBLEMS. - The Commission shall act to preserve the service areas of low-power television licensees pending the final resolution of a class A application. If, after granting certification of eligibility for a class A license, technical problems arise requiring an engineering solution to a full-power station's allotted parameters or channel assignment in the digital television Table of Allotments, the Commission shall make such modifications as necessary--

(i) to ensure replication of the full-power digital television applicant's service area, as provided for in §§73.622 and 73.623 of the Commission's regulations (47 CFR 73.622, 73.623); and

(ii) to permit maximization of a full-power digital television applicant's service area consistent with such §§73.622 and 73.623, if such applicant has filed an application for maximization or a notice of its intent to seek such maximization by December 31, 1999, and filed a bona fide application for maximization by May 1, 2000. Any such applicant shall comply with all applicable Commission rules regarding the construction of digital television facilities.

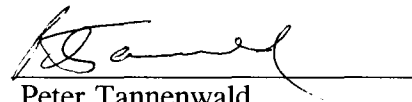
4/ According to publicly available CDBS records, KTUL's DTV construction permit, BPCDT-19991026ACJ, specifies an ERP of 11 kW and was granted May 12, 2000.

5/ It is too late for KTUL to propose maximization at the expense of a Class A station. See Section 73.6013 of the Commission's Rules; *Establishment of a Class A Television Service*, Memorandum Opinion and Order on Reconsideration MM Docket No. 00-10, FCC 01-123, released April 13, 2001, at par. 61 and 67.

5. While KTUL does have reason to move into the core, the Commission need not decide here all the ramifications of the extent to which a move into the core may impinge on a Class A station without regard to the availability of alternative channels, because KTUL has already shown that no impermissible interference will be caused to KFDF-CA, at least in theory. KFDF-CA is entitled to the protection provided in Section 73.622(c)(5) of the Commission's Rules both in theory and in practice after-the-fact. Since KTUL believes that such protection will be afforded, its proposal may be adopted based on that premise.

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Respectfully submitted,


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Jason L. Roberts

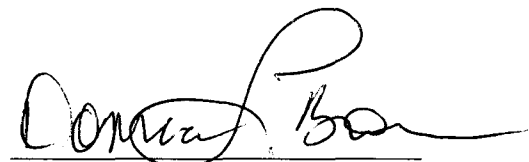
Counsel for Ft. Smith 46, Inc.

December 27, 2001

CERTIFICATE OF SERVICE

I, Donna L. Brown, do hereby certify that I have, this 27th day of December, 2001, caused to be sent by first class United States mail, postage prepaid, copies of the foregoing "Comments of Ft. Smith 46, Inc." to the following:

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